

DEC. 1, 2004 2:26PM

(3) FISH & RICHARDSON 6175428906

NO. 5138 P. 24

Attorney's Docket No.: 13377-002001 / 500840/MRO

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Applicant : Murali Nayudu et al                      Art Unit : 1657  
Serial No. : 09/890,306                      Examiner : Afremova, Vera  
Filed : July 27, 2001  
Title : A METHOD OF CONTROLLING FUNGAL PATHOGENS, AND AGENTS  
        USEFUL FOR SAME

DEC 01 2004

**MAIL STOP AMENDMENT**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**DECLARATION OF AVAILABILITY**

I, Y. Rocky Tsao, hereby declare:

1. I am an attorney of record in the above-captioned patent application.
2. The Australian National University (Acton, Australian Capital Territory 2601, Australia) is the assignee of the entire right, title and interest in the invention described and claimed in the above-captioned patent application.
3. Under the terms of the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purpose of Patent Procedure, one (1) *Pseudomonas* strain of this invention, i.e., AN5 rif, was deposited by co-inventors Dr. Murali Nayudu and Rajvinder Kaur on 28 January, 2000 with National Measurements Institute (NMI) formerly Australian Government Analytical Laboratories (AGAL), at 1 Suakin street Pymble 2073, New South Wales, Australia, where it was given AGAL Accession No. NM 00/09624. The deposited strain was in the possession of Drs. Murali Nayudu and Rajvinder Kaur at the time of filing of the above-captioned application.
4. The Australian National University agrees that upon allowance and issuance of the above-captioned patent application as a United States Patent, all restrictions on the availability to

**CERTIFICATE OF TRANSMISSION BY FACSIMILE**

I hereby certify that this correspondence is being transmitted by facsimile to the Patent and Trademark Office on the date indicated below.

December 1, 2004

Date of Transmission

Signature

Deborah R. Nagi

Typed or Printed Name of Person Signing Certificate

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the public of the deposit will be irrevocably removed, and until such time, the material will be available during the pendency of the patent application to one determined by the Commissioner to be entitled thereto under 37 C.F.R. 1.14 and 35 U.S.C. § 122.

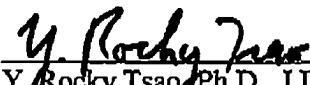
5. The Australian National University further agrees that the deposited material will be maintained with all the care necessary to keep it viable and uncontaminated for a period of at least five (5) years after the most recent request for the furnishing of a sample of the deposited material, and in any case, for a period of at least thirty (30) years after the date of deposit or for the enforceable life of the patent, whichever period is longer and that the deposited material will be replaced if the depository should be unable to furnish a sample when requested due to the condition of the deposit, such as inviability, contamination, or loss of capability to function in the manner described in the specification.

6. All statements made herein of my knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patents issued thereon.

Respectfully submitted,

Date: \_\_\_\_\_

12-1-04

  
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